

**OCT 13 2004**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

VIATCHESLAV OLEGAVICH  
MIKHAILIOUK,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-70751

Agency No. A75-313-275

ELENA ALEXANDREVNA  
MIKHAILIOUK; GUENNADI  
VITALIEVICH THEPOUR,

Petitioners,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-70753

Agency Nos. A75-313-273  
A75-313-274

MEMORANDUM\*

On Petition for Review of an Order of the

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Board of Immigration Appeals

Argued and Submitted June 8, 2004  
Seattle, Washington

Before: PREGERSON, FERGUSON, and CALLAHAN, Circuit Judges.

There is no question that the treatment suffered by the petitioners rises to the level of persecution and that it was perpetrated by individuals that the government was unable or unwilling to control. *See Prasad v. INS*, 47 F.3d 336, 339 (9th Cir. 1995); *Singh v. INS*, 134 F.3d 962, 967 n.9 (9th Cir. 1998). The only question raised in these petitions is whether the treatment was on account of one of the five statutory grounds. *See* 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1).

We find that the petitioners were persecuted because of political opinion based on their status as new entrepreneurs in post-communist Russia. While the persecution suffered by the petitioners, in another context, may be apolitical, the testimony of the petitioners and their expert compels the conclusion that, in context, the maltreatment was based on political opinion. *Cf. Hasan v. Ashcroft*, 380 F.3d 1114, 1120 (9th Cir. 2004) (noting that an act can be understood as a “political statement” despite the fact that the act does not “espouse a political theory”); *Jahed v. INS*, 356 F.3d 991, 998 (9th Cir. 2004) (noting that the political context in which extortion takes place cannot be ignored by the BIA); *Gafoor v.*

*INS*, 231 F.3d 645, 652 (9th Cir. 2000) (“When this case is viewed in context, a reasonable fact-finder could not conclude that Gafoor’s persecution was motivated solely by a personal vendetta. The evidence compels the conclusion that he was persecuted, at least in part, on account of his race and political opinion.”).

Moreover, the BIA’s finding that the persecution was merely at the hands of business competitors is not supported by the specific pages of transcript cited by the BIA and is not supported by the record taken as a whole.

A finding of past persecution on account of one of the statutory grounds creates a rebuttable presumption that the petitioners are eligible for asylum and entitled to withholding of removal. *Rios v. Ashcroft*, 287 F.3d 895, 901, 903 (9th Cir. 2002). Where, as here, the government has not attempted to rebut this presumption, we need not remand the case to the BIA for further consideration. *Baballah v. Ashcroft*, 367 F.3d 1067, 1078 n.11 (9th Cir. 2004); *cf. INS v. Ventura*, 537 U.S. 12 (2002).

On the basis of the foregoing, we find that the petitioners are eligible for asylum and entitled to withholding of removal.

**PETITION GRANTED. REMANDED.**